

Hearing on the Delay of the Employer Mandate

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Hearing on the Delay of the Employer Mandate

U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:04 a.m. in Room 1100, Longworth House Office Building, Hon. Kevin Brady [Chairman of the Subcommittee] presiding. Advisory

*Chairman Brady. The Subcommittee will come to order. We are examining the Treasury Department's strangely timed announcement that it is delaying the enforcement of ObamaCare's employer mandate for one year.

For the last several months, we have heard the White House repeatedly pledge to Congress and the American people that the President's Affordable Care Act will be ready on schedule; absolutely taken to the bank.

In fact, Secretary Sebelius recently insisted before this very Committee that the White House would not miss another ObamaCare deadline, not one, not again.

Shortly thereafter, the nation learned in a blog post of the embarrassing failure by the White House to have this major pillar of the new law in place on schedule.

The Treasury Department's announcement confirms our concerns. ObamaCare is simply not ready. This Committee has serious questions about how and why this alarming decision was made and the effect that delaying this key provision will have on other provisions of the law, specifically the directive that individuals purchase either Government approved health care or pay a tax.

There are also questions about the unprecedented manner in which it was announced on an obscure Treasury blog site just two days before the 4th of July holiday.

We invited Treasury officials to testify today to explain to the American people the rationale for the delay and how they announced this major setback. However, they declined to appear.

Let me be clear. This Committee intends to get an explanation and will plan on Treasury officials appearing at a date in the near future.

Let's also be clear about what this decision means. This one-year reprieve does not solve the problems of local businesses struggling to comply with ObamaCare. The consequences of the mandate still remain.

Employers are still required to provide Government mandated coverage or pay a substantial tax. Many local businesses continue to cut workers' hours and workers' paychecks as they grapple to meet the Affordable Care Act's definition of a "full time employee."

Many businesses are laboring to find more money for rising health care costs for themselves and their workers as costs increase, and jobs are still at risk, up to 3.2 million in the franchise industry alone, as local companies struggle with the onerous ObamaCare requirements.

For patients, families and their children, you have to wonder. If ObamaCare is not ready for business, is it ready for my family? A lot of lives are at stake. Quality health care is critical.

Everyone is aware the White House has missed almost every key deadline in preparing this health care law for individuals and families as well.

The White House says it is listening to the concerns of our nation's businesses, but are they ignoring the voices of American families and taxpayers.

Unlike businesses and labor unions, which have been granted a reprieve, there have been no delay of the individual mandate, forcing average Americans to buy Government approved health insurance or pay a tax.

These families and individuals are also facing higher costs and sky rocketing premiums. They have no relief from the new taxes in ObamaCare.

Today, three years after the passage of the President's signature health care law, the majority of Americans disapprove of this law. Who is listening to them?

If the Government mandate to buy insurance has been postponed for businesses and labor unions, out of fairness, should it not be postponed for families and individuals as well?

While the White House continues to suggest ObamaCare will be ready on October 1, the stunning delay of the employer mandate calls that into question.

Look at the pattern of delays and failures that have occurred since implementation began. The Class Act proved unworkable and was abandoned. The onerous 1099 reporting mandate was overwhelmingly repealed. The exchanges promised for small businesses failed to be ready on time and were delayed. Significant parts of the law were found unconstitutional, 34 states have chosen not to build state exchanges.

The technology intensive data hub that is key to ObamaCare is not ready. The navigator grants have not gone out to local communities. On and on, the list is growing, not shrinking, as we get closer to October 1.

Clearly, the roll out of ObamaCare is in disarray and experts question whether the White House is competent enough to administer its own massive health care law.

The employer mandate delay also can have profound impact on the Federal budget and raises numerous questions. How much less will the Government collect because of the delay?

How many more people will end up being forced into the exchanges? Without employer reporting requirements, how can we ensure subsidies are only going to those without offers of affordable insurance?

Again, it is unfortunate that no Treasury officials are here to answer these important questions. The American people, Congress and this Committee deserve these answers and we will get them.

What we do know is ObamaCare is making health care more expensive, costing Americans their jobs, shrinking their paychecks, and preventing families from keeping the health care they have and they like.

Instead of simply delaying enforcement of certain provisions of ObamaCare, it is clear this law must be repealed.

Before I recognize the Ranking Member, Dr. McDermott, for the purposes of an opening statement, I ask unanimous consent that all members' written statements be included in the record. Without objection, so ordered.

*Chairman Brady. I now recognize Dr. McDermott, Ranking Member, for his opening statement.

*Mr. McDermott. Thank you, Mr. Chairman. I suppose we could spend the morning talking about how and why the policy was changed and how it was announced. I might have preferred a different approach, but it is not my job to speculate on best practices for the White House.

It is my job, it is our job actually, to continue to shape and guide reform so that it best serves the American people, to focus on policy, not on politics.

There has been a lot of noise on both sides of the aisle over what this shift means but nobody really knows. I did not spend my 4th of July combing over the implications of the change and I doubt there is anybody on the dias that did.

I am trying to adjust and dissect this plan on the back of a galloping horse before we have a chance to properly consider it, which is completely unwise. We are back in session two days and here we are having a hearing on something that was announced before the 4th.

I am sure it is tempting for those who stood against reform and progress from the beginning to see this as a chance to rip ObamaCare apart again yet another time. The irony of objecting to the delay of a program you have been trying to stop is no doubt lost on this room.

We are even going to get a 38th vote shortly to repeal it, so you know where one half of this room is coming from. The fact is ObamaCare is largely unaffected by the delay. It was always designed to be built on current coverage and fill in the gaps. The employer responsibility requirements are just a piece of that puzzle that make up universal coverage.

The marketplace exchanges are on track to open on March 1 (sic). My state is well out there. I have been talking to people over the 4th of July and they are raring to go. There are many places in this country that have geared up for this. Places like Texas have not, and that is another issue.

Premium filings are coming in lower than expected in Washington, California, and other states. Oregon's 2014 filings show premiums slashed by as much as 35 percent.

Reality dramatically contradicts the rhetoric that you hear in here.

We do not know exactly what the landscape will look like in January, but it is entirely possible this decision will actually help the consumers. They will have a chance to have access to the exchanges. Employees who remain uncovered will be able to find assistance through tax credits and other subsidies in the Federal marketplace or the state exchange.

The delay will also give businesses time to adjust and for the community to work with Treasury to work out the most efficient and effective way to comply for the law. For 95 percent of the employers who already offer coverage to their employees, we have every reason to believe they will continue to do so.

Microsoft, Amazon, Boeing, they are not going to stop offering to their people.

Massachusetts saw no drop in employer coverage under Romneycare. In fact, in the seven years since its implementation of universal health insurance, employer coverage has actually increased slightly, but more importantly, it is better for us to delay this and get it right than to rush and get it wrong.

I would like to put it in a little historical context here. In 1966, when I was beginning my medical practice, medical workers were traveling door to door -- Medicare workers were traveling door to door trying to enroll seniors with 100 million leaflets that were printed before the bill was signed into law or passed out of the Congress.

They were already up and running. They got a jump stop. They printed it without appropriated funds, and usually those doors were slammed in their face.

The American Medical Association denounced the program as the first step towards socialism, and agency administrators wondered if hospitals would be over run with the sick and the elderly patients stretching out for blocks.

You can read this in the history. I am not making this up. This is what was going on in 1966.

The Bureau of Health Insurance began operating without oversight and often without regard to formal requirements of rulemaking simply hoping things would fall into place. Forty-seven years later, Medicare is the bedrock of our social safety net. It is the standard bearer of a Government that works, and a big part of what saved us then was everyone was working together to get it off the ground.

Congress intentionally wrote flexible conditions and the Administration was allowed to make changes as they saw fit. They were willing to take chances to ensure success.

Let's consider the path before us. Before we burn the bridge behind us, the President is not going to reverse this decision so nothing that happens today is going to make any difference, so let's see where it goes.

More importantly, let's remember to whom we are accountable. It is not pollsters or cable news anchors or the President's campaign team.

Our only job in this Committee is to fulfill the promise to American citizens of affordable health care. We are having this hearing to hear from you why this is not going to work. That is what it is all about. The supposition of this hearing is that it is all over, it is dead.

Let's see if that is true. I yield back the balance of my time.

*Chairman Brady. Today we will hear from five witnesses. Avik Roy, Senior Fellow from the Manhattan Institute. James Capretta, Fellow with Ethics and Public Policy Center. William Dennis, Jr., Senior Research Fellow at the National Federation of Independent Business. Sean Falk, Owner of WolFTeam LLC, and Timothy Jost, the Robert L. Willett Family Professor of Law, Washington and Lee University School of Law, who is accompanied by his wife, Ruth, today.

Mr. Roy, you are recognized for five minutes.

*Mr. Roy. Chairman Brady, Ranking Member McDermott, and members of the Health Subcommittee, thanks for inviting me to speak with you today with the Affordable Care Act employer mandate.

My name is Avik Roy. I am a Senior Fellow at the Manhattan Institute for Policy Research in which capacity I conduct research on health care and entitlement reform.

In my remarks today, I will focus on three questions. First, does the employer mandate the Affordable Care Act achieve its goals.

Second, what are the ramifications of the White House's decision to delay the mandate by one year.

Third, what would be the policy impact of H.R. 903, the American Job Protection Act, which would repeal the employer mandate in its entirety.

While the Affordable Care Act strives to achieve many things, the law's primary goal is to move the United States as close as possible to universal health insurance coverage. Does the employer mandate help to achieve this goal? My view and the view of many others across a spectrum is it does not.

According to the Medical Expenditure Panel Survey, 97 percent of firms with 50 or more workers already offer health benefits. Now, 97 percent is not 100 percent, of course, and not all firms that offer coverage offer it to every employee.

The ACA's employer mandate perversely incentivizes employers to avoid hiring low-income workers, precisely the type of workers who tend to be uninsured. As the Center on Budget and Policy Priorities put it in 2009, in essence, affected firms would pay a tax for hiring people from low or moderate-income families.

The penalties associated with the employer mandate are only triggered if a worker is not offered what the ACA deems "affordable coverage," and if the worker then gains subsidized coverage on an ACA sponsored insurance exchange.

As a result, employers have three incentives. First, to hire fewer full time workers. Second, offer so-called "unaffordable coverage" for which the penalties are lower. Third, hire illegal immigrants or workers from high-income families who are not eligible for exchange subsidies.

For the Affordable Care Act, low income individuals would still be able to gain subsidized health insurance but they will be tagged with a Scarlet "S" for gaining those subsidies, because to employers, hiring subsidized individuals will be far more costly than hiring unsubsidized ones.

An one-year delay of the employer mandate does give the Administration more time to implement the law, but a delay does not fundamentally alter the perverse incentives I have just described. It simply gives employers an additional year to restructure their workforces accordingly.

An one-year delay does, however, impact other important provisions of the ACA. In order to gain eligibility for exchange subsidies, an individual must prove he has not been offered "affordable coverage" from his employer.

Now that the reporting requirements of the employer mandate have been delayed, it may be difficult for him to establish that. Hence, it appears that CMS will rely on applicants' attestations, the so-called "honor system," to dispense subsidies in some cases.

Similarly, the ACA's individual mandate only works if the Government can verify whether or not a worker is full time or part time, whether he has been offered affordable or "unaffordable coverage," or none at all.

H.R. 903, the American Job Protection Act, is a bipartisan bill that was introduced last February by Dr. Boustany and others and referred to this Committee. It would repeal the employer mandate by striking the relevant sections of the Internal Revenue Code and the Affordable Care Act.

Repealing the employer mandate would eliminate the perverse incentives I described earlier. Most importantly, it would encourage the transition away from costly, inefficient employer sponsored coverage, and towards portable, individually owned insurance policies.

As you all know, economists have long advocated for this transition and repealing the employer mandate would go a long way toward achieving it. In this way, H.R. 903 could emerge as a major policy advance.

Some analysts have raised concerns that such a transition would be costly due to the increased spending on exchange subsidies that would result. However, in March 2012, the CBO estimated that if an additional 14 million workers moved from employer based to exchange based coverage, the deficit would actually decrease by \$13 billion over ten years. This is because the increase in exchange subsidies is offset by a reduction in lost revenue from the tax exclusion for employer sponsored insurance.

It will be important for H.R. 903 to be adjusted in order to take into account its impact on the disbursement of subsidies in the individual mandate.

The individual mandate, for example, could be replaced with a more limited open enrollment period for participating in ACA certified insurance plans. This would achieve the individual mandate's goal of curbing adverse selection without the mandate's intrusiveness or constitutional injury.

I will conclude by recalling that Scarlet S. We all want an economy in which those at the bottom of the ladder have the opportunity to find gainful employment and good health. The employer mandate harms those it is intended to help. Instead of delaying it, we should repeal it.

Thanks again for having me. As an addendum to my written testimony, I have included three articles from Forbes in which I further expand on these issues. I look forward to your questions and to being of further assistance to this Committee.

*Chairman Brady. Thank you.

Mr. Capretta?

*Mr. Capretta. Mr. Chairman, Ranking Member McDermott, and members of the Subcommittee, thanks for the opportunity to be here today.

The decision by the Administration to abandon the employer mandate for 2014 and to allow applicant income attestations in some instances were only announced last week. It will take some additional time before the full implications are known.

Nonetheless, in my testimony, I will try to provide some initial observations about what they might mean. Technically, the Administration did not announce a delay in the employer mandate. What was announced was an one-year delay in the reporting requirements necessary to enforce the mandate.

The Administration simply noted in its announcement that the delay in collecting the relevant data would necessarily mean a simultaneous delay in determining which employers owed shared responsibility payments. Thus, the entire employer mandate structure was put off for a year through the back door of an administrative decision to not collect information.

Some have questioned the Administration's legal authority to take this action. It is certainly clear that what the Administration is doing is not consistent with the intent of the statute Congress put in place to mandate and a reporting system to enforce it to begin in 2014, not 2015.

I am not a lawyer. I will leave it to others to debate whether the Administration can stretch the meaning of the words in the statute to justify what they are doing.

I would only note that no one has yet disputed that it is clearly inconsistent with what Congress intended.

The employer debate is a terribly flawed policy. It is harmful to lower income workers, to job growth, and to the strength of the broader economy. The structure of the mandate's effects on employment and job growth are well known. They were obvious even before enactment.

For starters, the law exempts any employer with under 50 workers from the mandate's requirements. Not surprisingly, firms are adjusting to stay beneath this 50-worker threshold. Exactly what we do not need in the current economy.

The structure of the mandate's penalties, as already mentioned, provides powerful incentives for employers to avoid hiring lower income workers.

For instance, if you are a restaurant and you have the option of hiring a worker who you were going to pay low wages to from a middle class neighborhood or a lower income neighborhood, you might pick the middle class neighborhood because the probability is they would be less likely to draw subsidies under the exchange and therefore induce a penalty on the employer. It creates a terrible bias in the law.

The law also exempts part time workers from the penalty structure and establishes 30 hours per week as the upper limit for determining which workers are considered part time.

We have seen story after story around the country now about firms adjusting and even local governments adjusting to push their workers below this 30-hour per week threshold.

In addition, it was known in advance of enactment that the employer mandate as designed in the health care law would be terribly burdensome to enforce.

Former Congressional Budget Office Director Robert Reischauer made this point publicly to a meeting of journalists in 2009, stating it would be an immense hassle on the administrative front as he urged a different approach. Last week's announcement made it clear that he was absolutely right.

The Administration's decision not to enforce the mandate does not alter these problematic effects. Employers that are today hesitant to hire workers to go above the 50 worker threshold or to move their part time workers above 30 hours a year are not going to turn their plans upside down based on an one year delay.

The recent unilateral decisions by the Administration will have significant budgetary consequences. CBO estimated that the employer penalties were supposed to generate \$10 billion in 2015 based on reporting in 2014. It is hard to imagine they are going to collect that \$10 billion now. In fact, I assume it is gone.

Moreover, it is quite clear that the whole structure for enforcing the employer requirements has now been put into question. If you listen to the employer community, they say it is basically unworkable and will never generate the income it was supposed to generate.

In CBO's original estimate, they assumed \$140 billion from these employer payments. Does anyone believe we are going to collect that much money from something that is so controversial?

Finally, the reliance on income attestation, in some instances in the exchanges, is very likely to result in more erroneous payments.

In 2012, according to the Treasury Inspector General for Tax Administration, the Federal Government paid out up to \$13.6 billion in erroneous EITC payments, a system that has many more data checks, also has been in place for more than two decades, and has lots of enforcement tried to be built into it, and probably less complicated than the premium credits in the health care law.

Relying on the "honor system" is very likely to result in numerous and large scale erroneous payments.

The Administration's recent decision to delay significant parts of the health care law is an invitation to Congress to revisit the law, too.

I would urge this Committee and this Congress to consider statutory delay of the employer mandate, a simultaneous statutory delay in the individual mandate, and a strong look at delaying the entire exchange process until it is clear that the data systems protect taxpayers.

Thank you.

*Chairman Brady. Thank you.

Mr. Dennis, you are recognized.

*Mr. Dennis. Thank you, Mr. Chairman. My name is William Dennis. I am a Senior Research Fellow at the NFIB Research Foundation.

When you are ill prepared, as a general rule, it is advisable to delay, postpone or even cancel. In this case, small business people, small business owners certainly are receptive to the delay.

There has certainly been no information or certainly inadequate information for them to make the decisions, which are necessary to operate under this program.

The delay, however, changes nothing, just kind of delays it, moves it back a year, including small business reticence to hire and to invest.

The exception, of course, is the diminished confidence in the ability of this Administration and perhaps any Administration to get something of this size done correctly or even to do it at all.

Let's assume for a moment that everything gets straightened out next week. There is guidance, rules, and all that sort of thing, and obviously that is not going to happen, but let's make that assumption.

Small business still has a major information problem. Small business owners get their information generally through secondary channels. Secondary channels are accountants, lawyers, and websites of trade associations, so on and so forth.

That means that in order to inform the small business population generally, it is a two-step process. You have to educate the educators. The educators then in turn will educate the population.

Quite frankly, if we are looking at 2015, January 1, 2015, they are still going to have to hustle to get information out to small businesses that will help them with compliance issues. That says nothing for any recordkeeping that they are going to have to start with on January 1, 2014, depending on how the rules are subsequently interpreted.

As I mentioned, the substantive issues really have not changed. They are the same, they are just moved back a year. I have identified five that I would just like to mention, although there are some others I am sure others would highlight.

The first obviously is the full time/part time issue, the 35-hours/30 hours. I am not sure I know of anyone who disagrees this has become a real problem and a real disincentive to hiring.

Parenthetically, some would argue that only three percent of small businesses are affected by this employer mandate. This provision alone shows that number is silly because this provision will affect literally hundreds of thousands if not millions because those with and those without are going to have to consider this when they make their decisions on health insurance.

The second is the so-called "look back rules." This effectively is going to require enormous amounts of paperwork because they are going to have to start keeping hourly records on salaried employees.

Fifty-five percent of small businesses have at least some salaried employees. They are not keeping hours now. They do not have systems in place. They would not normally have systems in place to do this.

Clearly, if we were going to look at these people on an hourly basis to qualify as full time employees, they are going to have to have hourly records, which is a massive new recordkeeping problem.

The determination of affordability is number three. I am not really sure what to say because we never had any rules, proposals, and it looks like it may be difficult but who knows. That is really up in the air.

Number four are the business aggregation rules, and this is the sleeper. This is the one that I think has huge potential significance and for two reasons. Many owners have more than one business, many businesses have more than one owner. What combination or combinations constitute a single entity?

Now we get to the second problem. This has been answered by putting these combinations under the ERISA rules. The ERISA rules are some of the most complicated rules known to mankind. In fact, there is only a very small segment of the legal population, employee benefit group that can even interpret this thing.

Here you may have as many as 100,000 businesses needing some type or should have some type of interpretation, understanding or whatever, and only a very, very small community is going to be there to satisfy that.

Lastly, five, the mandate per se, it is a relic in a sense. It is tied to health insurance. It ties health insurance to employment. We should be going exactly in the opposite direction. Effectively, we are freezing the past when we should be looking to the future.

Thank you very much, Mr. Chairman.

*Chairman Brady. Thank you, Mr. Dennis.

Mr. Falk, you are recognized.

*Mr. Falk. Chairman Brady, Ranking Member McDermott, and members of the Subcommittee, thank you for your invitation to testify at today's hearing.

I am honored to speak with you regarding the Affordable Care Act. I believe my role as a franchise/small business owner gives me an unique perspective that is not heard often enough in Washington.

Franchise/small businesses have been particularly affected by the Affordable Care Act, and I hope to express the concerns of myself and that of our industry as a whole.

My name is Sean Falk and I own and operate 12 franchise business units. As a former United States Marine, I understand the demand for hard work. As a business owner, I had the luxury of working any 80 hours of the week that I choose. With 43 full time equivalent employees, I am a proud participant in a diverse franchise community, which supports nearly 18 million jobs.

You may recognize some of the businesses I operate, Salsarita's Fresh Cantina, Great American Cookies, Mrs. Field's Cookies, and Pretzelmaker.

I bought my first franchise in 1998, and through 2008, I was opening on average more than one location per year. I am also a member of the International Franchise Association, and I am here today to represent the Association and the entire franchise community.

Government actions play an important role in my business decisions. As a business owner, I cannot make future business plans when Congress plans and extends regulations for only one year at a time or changes them with only six months before implementation.

While my fellow small business owners and I applaud the Administration for delaying the implementation of the employer mandate due to the continued ambiguity of the law and its compliance requirements, it does not solve the fundamental problems associated with the ACA and its impact on business operations and future job growth.

We have to plan well in advance for significant changes in the law. Receiving key regulations less than three months before a new requirement goes into effect does not provide ample time for employers and small business owners to successfully adapt their businesses to remain economically stable.

Implementation of the Affordable Care Act has presented an enormous challenge to me as a small business owner. Navigating the constant changes, waivers, extensions, regulations and clarifications of an already cumbersome law has diverted my focus from developing my business and creating new jobs. I am facing the legalities of health care exchanges, the employer mandate, and full time equivalents, whether it is in 2014 or 2015, all of these tasks take me away from my core mission of growing my business.

There are very few Government resources to guide small business owners through this process.

The franchise industry has two specific changes that could be made to the ACA to help small business owners like myself comply with the law without hurting our businesses.

Number one, increase the 30 hour threshold that qualifies an employee as full time to 40 hours a week. Secondly, increase the 50 full time equivalent employee threshold that requires employers to provide coverage to full time employees.

Currently, I employ 43 full time equivalent employees. If my business grows and I create jobs, I will also drastically increase my costs due to the employer mandate. This has an undeniable impact on my bottom line, which is my livelihood as a business owner, and it is making me reconsider opening new locations.

Also, I may be forced to reduce my employees' hours to less than 30 hours per week so that they do not require full time status when I do expand.

With these challenges and changes, I fear it may be a struggle just to keep the doors open on my 12 existing businesses.

I would relish the opportunity to grow my business, but the recent Government regulatory burdens placed on my small businesses and the uncertain economic climate have given me reason for pause.

I have to weigh the pro's and con's of the ACA before deciding on future growth. I hope policy makers will consider focusing their energies on addressing the burdens small business owners face within the employer mandate, whenever it is implemented.

It is time to address these fundamental challenges facing our industry that are keeping small business owners and entrepreneurs on the side lines and from creating new jobs.

Thank you for the opportunity and I look forward to answering any questions you may have.

*Chairman Brady. Thank you.

Mr. Jost, you are recognized.

*Mr. Jost. Thank you for this opportunity to address you today. You have now heard 20 minutes of criticism of the Affordable Care Act and I have five minutes to respond. I wish I had 20 minutes to respond because a lot of what has been said is inaccurate and a lot of questions that have been raised have answers. I will try to confine my remarks.

On January 1, 2014, millions of uninsured and uninsurable Americans will become eligible for coverage under the Affordable Care Act. The ACA expands coverage through five major mechanisms.

These are the premium tax credits, which will make care affordable to millions of lower and middle income Americans, expand Medicaid for lower income Americans, which in spite of the Supreme Court's decision will still extend Medicaid coverage to millions next year.

Provisions that protect Americans from preexisting conditions from being denied insurance or charged higher premiums, the individual responsibility provision that asks Americans who cannot afford health insurance to purchase it or pay a tax, and finally the employer mandate, which requires large employers to offer affordable and adequate coverage to their full time employees or risk facing a tax penalty to offset the cost the public will incur of covering their employees.

Ninety-five percent of employers with 50 or more employees already offer health coverage in the absence of a mandate, but this mandate is there to encourage employers to maintain or expand coverage and discourage them from dropping it.

On January 2, 2013, the Treasury Department announced it was delaying for one year the ACA employer and insurer reporting requirements. Treasury had heard from businesses, and I think we have heard this morning, that they needed more time to comply.

Because it is impractical to implement the mandate without the reporting, enforcement was delayed until 2015. This decision raises four issues. First, was it legal.

ACA's employer responsibility provisions do have an effective date of January 1, 2014. The reporting requirements, however, apply "At such time as the Secretary may prescribe."

Also, the ACA requires the IRS to assess and collect penalties in the same manner as penalties under Chapter 68 of the Internal Revenue Code, and the IRS frequently abates Chapter 68 penalties.

The IRS claims authority under Section 7805 and points to a long history of both Republican and Democratic Administrations delaying implementation of tax provisions when time and resource constraints have made immediate implementation impractical.

A second question is whether delay jeopardizes the implementation of other ACA requirements, particularly provisions dealing with eligibility for premium tax credits.

The law was never intended -- exchanges were never intended to rely on insurer and employer reports, which are supplied long after tax credits are granted, to determine an applicant's employer coverage.

In a final rule released last Friday, the Administration set out a system for gathering and verifying information needed to determine individual eligibility. It is described in my written testimony. I would be happy to explain it in as great length as you would please.

It is not an honor system. Much of our tax reporting system is a honor system. This is not an honor system. Furthermore, false reporting carries a \$250,000 fine and is a felony.

The third question is whether the delay is justifiable from a policy perspective. The announcement was greeted favorably by a wide range of business and insurance interests who were concerned about the complications of reporting. The moratorium should allow employers and insurers to adjust their IT systems to make reporting possible beginning in 2015.

In the meantime, employers will know how many of their employees if any are getting premium tax credits and will have time to adjust their coverage offerings to make sure they are in compliance by 2015.

There is little evidence that employers will rush to exit employee coverage in the meantime. All the many reasons employers have for offering coverage today will continue to exist and the lack of one more incentive is not going to drive them to drop coverage.

Finally, will the delay otherwise impede the implementation of the ACA. Congress in 2010 gave the Administration an enormous task, preserving our current employment and private insurance based system while modifying it to serve all Americans.

This Congress has made that task immensely more difficult by starving the Administration of the resources they need to do this task. The Administration continues to reiterate that the most important reforms, the premium tax credits and the exchanges, will be fully functional by January 1, 2014, and I know of no evidence to the contrary.

Delaying the less essential employer mandate will make the Administration's job easier, not harder, and is likely to minimize potential confusion for employers and employees alike.

If you actually care whether ACA implementation will help your constituents, take action immediately to appropriate the money needed to get the job done. If you are not willing to help with the job of ACA implementation, you have no standing to complain of delays.

Thank you.

*Chairman Brady. Thank you. I have questions for Mr. Capretta, Mr. Roy and Mr. Falk. Mr. Capretta, you talked about fairness in your testimony that you submitted to us, that if the employer mandate is going

to be delayed, it will only seem fair if the individual mandate is as well. Why should large companies be relieved of the responsibilities but not workers.

You talk about is it fair to threaten tax penalties on the uninsured under these delays.

Can you explain why you feel that way?

*Mr. Capretta. Yes. Certainly the law requires that individuals beginning in 2014 sign up with the Government approved insurance, either through their employer or through the exchanges, or they pay a penalty of the greater of \$95 or one percent of their household income. That will be enforced in the tax system through what they are filing in taxes probably early in 2015.

Look at the situation we have now, where you have many employees potentially not getting an offer of coverage from their employers because the employer requirements have now been suspended for a year. Moreover, we do not know if they were offered coverage through their employer.

Moreover, in many of the exchanges around the country, in at least one state, only one plan is being offered, and in many states, maybe two plans being offered, so the choices are going to be quite limited.

Is that the circumstances upon which you want to start imposing on many lower income families a tax for not signing up for coverage? They made the judgment that the employer system was not ready to be enforced in 2014. It is quite obvious to me that the individual mandate is also not ready to be enforced in 2014.

I would absolutely urge this Committee and the Congress that if you are going to delay one, you should delay both.

*Chairman Brady. Thank you. Mr. Roy, if ObamaCare is not ready for businesses, is it ready for our families? You are a health care expert. Let's assume it is your family, your child is ill, your spouse needs treatment, is ObamaCare ready for your family in your opinion?

*Mr. Roy. No, I would not only echo Mr. Capretta's points but I would point out that the cost of coverage on the ACA exchanges is going to be much higher than what currently exists in the individual market for health insurance. Not only are we requiring through the individual mandate that individuals and families purchase insurance coverage, we are requiring them to buy coverage that in many cases is two to three times the cost of coverages available today.

*Chairman Brady. For some, their health care costs will go up dramatically?

*Mr. Roy. That is correct.

*Chairman Brady. Mr. Falk, you were not here a few years ago, but you are hearing history rewritten today. A few years ago, the employer mandate was taunted as one of the twin pillars of ObamaCare upon which this massive new law depended upon, and every effort by Republicans on this dias to eliminate the employer mandate was greeted with outrage, and claimed we were trying to gut ObamaCare.

Today, you hear a different story, that the employer mandate, no big deal, really just an after thought, that has no impact on businesses like yours. In fact, what we hear today is this one year reprieve is the greatest thing since sliced bread.

Is the employer mandate impacting your business and your ability to hire, and is this reprieve what you seek, this one year temporary reprieve, is that what you think is the solution?

*Mr. Falk. I think the one year reprieve really does not do anything to address the problems of the mandate itself. The mandate does affect me, although I am not under it right now, it does prevent me from growing my business to become even larger. As I told you, for ten years, I opened up about 1.5 locations per year on average, and I want it to grow forever. Since 2008, I have really slowed that down.

*Chairman Brady. For every one of those, how many people are you hiring when you have a new franchise?

*Mr. Falk. Each location is anywhere between 10 and 25 people, probably about three of those people on average are full time, the rest are part time. I am in a business where I have a lot of first time employees, high school or college people or people who are just trying to make ends meet by getting a part time job. The full timer's are not as numerous as the part timer's.

*Chairman Brady. For you, the employer mandate is not a small thing?

*Mr. Falk. It is not a small thing at all. I have been nominated and selected as Franchisee of the Year many times, and I am very engaged with my franchise system. I am very engaged with the IFA. I am very engaged in business in general.

I am embarrassed to say that I really have no idea about the employer mandate and where to find information. I do not know how to report, where to report, what the requirements are. It is coming up, I know that. I still do not have any information on it. I am upset to know that I have to worry about all these things rather than just grow my business and provide jobs. This takes up all my time now.

I do not want to call out Mr. McDermott but he said on the 4th of July, he did not spend his 4th of July worrying about the announcement and the changes, well, I did, as a business owner, I worked on the 4th of July. I worried about it. I fielded calls from other franchisees asking what this meant on the 4th of July.

*Chairman Brady. Thank you. I would just point out, I appreciate Mr. Jost being here, but the IRS, the tax system, is not an honor system. At least the IRS uses \$10 billion a year to enforce that honor system.

The claim that the Administration has been starved just has no basis in fact. In fact, HHS used \$8 billion to create out of thin air a bonus program for Medicare Advantage, to postpone the cuts before the election. I just wonder if they would like to have that \$8 billion that they squandered back now they are claiming they do not have the ability to implement.

*Mr. Jost. Can I respond to that?

*Chairman Brady. Sure.

*Mr. Jost. With respect to the first question about the tax system being an honor system, certainly some parts of our tax system are covered by reporting, but many parts are not.

I would remind you that this Congress repealed the 1099 requirement, which was supposed to take small businesses, or businesses off the honor system with respect to reporting purchases of goods of more than \$600, and the CBO projected that lost \$22 billion in revenue by putting businesses on the honor system.

The tax gap in the United States in 2006 was estimated to be \$385 billion of uncollected taxes. Those taxes were uncollected because we do essentially have an honor system for many parts of our --

*Chairman Brady. What we are learning from the IRS investigations is our agents apparently are spending all their time pursuing political agendas rather than enforcement of our current law.

Again, ObamaCare and HHS squandered \$8 billion on a program they made out of thin air and got hammered on because they squandered that.

Again, back to the issue here, is it fair to demand that businesses -- that workers and their families have a Government mandate when we have given a reprieve for businesses.

Dr. McDermott?

*Mr. McDermott. Thank you, Mr. Chairman. It strikes me that the issue here is basically not about the delay because the businesses asked for the delay and the Government gave it to them. That is off the table.

The real issue here is whether you want ObamaCare or not and are you going to do it, and are you going to have any kind of mandates in it.

From the very start, everybody has understood that for a system to work, you have to have everybody in. Justice Scalia in his oral questioning on this case in the Supreme Court when talking about the mandatory coverage provisions said "My approach would be say if you take the heart out of the statute, the statute is gone. There is going to be a deficit that is to be made up by the mandatory coverage provisions."

All that money has to come from somewhere, so you just are put to a choice, I guess, bankrupting the insurance companies and the whole system comes stumbling down, or else enacting a Federal subsidy program which is what the insurance companies would like.

It is clear there is a difference between the employer mandate and the individual mandate. The individual mandate is the core of the issue. If we do not require Americans, we are going to continue to have people who are free riders, who walk into the emergency room, get taken care of, and you and I who have insurance pay for it, \$1,000 a year. What this system is doing is saying let's everybody pay what we can.

I listened to Mr. Falk and I am really sorry that you had such a bad weekend. Healthcare.gov is on the computer. You can look in there. There is a section for small business. I am sure you have looked at it already and you can read, obviously, so you know what is there.

Mr. Jost, explain what is really going to happen to individuals when this law is implemented or in January, as people enroll from September or October 1 to January, what is going to happen to them?

*Mr. Jost. Thank you. One thing I would like to point out to begin with is the individual mandate is already being phased in, so if we are trying to level the playing field that is what HHS is doing.

The first year of the sanction for not complying with the individual mandate is \$95, and again, that is only if you do not fit into one of the many exemptions to the rule or you can afford health insurance otherwise.

It then phases up over three years. Well, we are essentially doing the same thing now for businesses. We are saying you do not have to comply the first year, but you do have to get serious about compliance after that.

As far as leveling the playing field, that is in a sense what the Administration is doing, although I am not sure I appreciate the way they did it.

In terms of what happens now, on October 1, the exchanges are going to open their doors. People who cannot afford health insurance, people who find insurance unaffordable, people who are ineligible for Medicaid, can show up at the exchanges and sign up. There are going to be many insurers, insurance agents

and brokers and navigators and community assistors, enrollment counselors and others trying to get them in that door.

I have a good friend at church who a week ago discovered that she had a big lump on her back. She went to see a doctor in the emergency room. The doctor said it could be cancer, I can operate on it, but you will have to pay me a quarter of my fee up front. She is uninsured. As of January 1, she is going to be able to get health insurance. She is going to be able to get health insurance she can afford. She will be able to get medical care. That is what is going to happen.

On the individual mandate --

*Mr. McDermott. How will they go about verifying whether she is eligible for a subsidy or not?

*Mr. Jost. She will go to the exchange, and this is what came out in the rules, and I frankly spent 18 hours on Saturday reading the 600 page rule.

*Mr. McDermott. Thank you.

*Mr. Jost. If anybody wants to know what it says, you can go to my blog at HealthAffairs.org, and it is there.

The way the verification system works for income is the first thing, the exchange will log into the data hub, which will have information from the IRS, from Social Security, from Homeland Security. It will verify that the person is a citizen or legal resident, and the amount of income they reported the prior year.

If the income is essentially the same, there is not a problem. If they are reporting now my income has significantly decreased, the Federal exchanges, which will operate in two-thirds of the states, will ask for verification of that.

The state exchanges for the first year have the flexibility of instead doing a statistical sampling, so they will for a sample of the people in the exchange, they will ask for verification of income, but the rest, they will not for the first year, to relieve the burden from the state exchanges.

*Chairman Brady. Thank you. Mr. Jost, perhaps we can return to you in another line of questioning. Time has expired. Mr. Johnson?

*Mr. Johnson. Thank you, Mr. Chairman. I hate to see a dictatorship come into this country but it sure looks like that is what is happening with health care.

Mr. Capretta, many have raised a concern of the impact of ObamaCare on the Federal Government and our budget and the criticism was there was over \$1.8 trillion in spending, and many of the pay-for's were in fact budget gimmicks. They claimed the Class Act would raise \$80 billion. The Administration shut it down because they admitted it was fiscally unsustainable. Congress repealed it.

The 1099 reporting requirement, an outrageous reporting requirement on business, raised \$22 billion. Congress repealed that.

Both the House and Senate have voted to repeal the medical device tax because it is costing jobs and hurting medical innovation. That tax raised over \$30 billion.

Now the employer mandate is delayed, lost at least \$10 billion in 2014 alone in penalties. As you point out, if this never goes into effect, that is another \$140 billion.

With the lack of employer reporting, there will be more errors and more subsidies so the cost of ObamaCare is just going up and up and up.

Mr. Capretta, is ObamaCare now officially a fiscal time bomb and can it be considered a drain on our economy and the American family?

*Mr. Capretta. Yes, the short answer is yes. It was always a fiscal time bomb. It has been made more so by the fact that the Administration is implementing something that was not passed. As you indicated, you enumerated many of the instances. There are a few more.

There is a health insurance tax that was enacted as part of this law that applies only to fully insured products but not self insured plans. It is a huge distortion in the insurance marketplace, pushing a lot of people that probably should not self insure towards self insurance to avoid the tax. Another bad idea, it probably will not survive the long term.

You mentioned the employer mandate. Obviously, at \$140 billion, it looks to be in question. The individual mandate is tied to it in a lot of ways. They are thinking they are going to collect about \$45 billion over the next decade from the individual mandate payments. At least in the first year, I very much question whether they can collect \$2 billion.

You now have a system that it is hard to figure out whether people have an affordable offer of coverage from their employer. There is going to be a lot more people presumably in the exchanges getting subsidies that actually got an affordable offer of coverage.

Finally, you know they cut about \$700 billion out of the Medicare program as part of this. They essentially double counted the money. They spent the money in this new entitlement program and they are counting on those reserves to pay future Medicare claims.

The whole thing was built on a house of cards. It is not fiscally sustainable. This is one more element, I think, the announcement last week that shows it was built on financing that we cannot count on.

*Mr. Johnson. Doc's like to get paid, you know. I am not sure they are going to under this system. I remember when I was stationed in England in the Air Force, as you know, they have that system over there. I walked into the doc's office with my son and they said are you paying. I said yes. Come right in, ahead of about 100 people that were waiting out there. That is the way you make health care work.

Mr. Capretta, I think it is officially a fiscal time bomb. You said that. Can it be considered a drain on our economy and the American family?

*Mr. Capretta. I think last week's announcement by the Administration was a concession that it was. One thing that strikes me, it is quite clear that employers are going to the Administration and saying hey, this is costing jobs, if you look at the recent data, there is lots of evidence that small businesses are not growing as fast, they are moving people into part time work.

The Administration, I am sure, is hearing this from lots of people around the country, their allies that are trying to promote the law.

If it was a bad idea to enforce this in 2014, I cannot imagine it is going to be a good idea in 2015. They are going to have a real problem, I think, justifying making this a permanent part of the law going forward.

Yes, it is a burden on the economy and frankly I think the Administration conceded as much.

*Mr. Johnson. Thank you, sir. Thank you, Mr. Chairman. I yield back.

*Chairman Brady. Thank you. Mr. Thompson is recognized.

*Mr. Thompson. Thank you, Mr. Chairman. Thank you for having today's hearing and thanks to all the witnesses for being here.

I do not think you can claim that anybody is excited about this delay. I do not like the delay any more than anybody else. I would suggest it is better to do the delay and to get this right than not do the delay and get it wrong.

This is important stuff. I think it is important to point out that we did not do health care reform because we did not have anything else to do one day. We did not wake up and say nothing is going on, let's do health care reform.

Health care reform was in response to a national crisis. I do not think we can down play that. We had folks who were not insured. We all know that. We had people that were a layoff away from having no insurance at all or a sickness away from having no coverage at all. That is devastating to everybody, including the business community.

We had a system where we had uncompensated care costs in every hospital and every district across this country. Every one of us had millions of dollars of annual uncompensated health care costs to our medical providers and to our hospitals. The system was broken, and that is what we tried to fix.

It is important that we get it right. It is important that we insure folks. I believe that we are going to hit other snags along the way. I do not think there is any program of any importance where this is not going to be the case.

I know that people across this country, people in my State, in particular in California, are working very hard to make sure that affordable health care and health care insurance are available to people who need it.

Mr. Dennis, you talked about some business issues. What is your business? What business do you own?

*Chairman Brady. Could you hit that microphone?

*Mr. Thompson. What business do you own?

*Mr. Dennis. Excuse me. I'm a Senior Fellow with the NFIB Research Foundation. So I --

*Mr. Thompson. But you had mentioned some of the challenges that businesses were facing. I can tell you without question the businesses in my District want this to work.

And, Mr. Falk, you talked about the lack of information. Does your association not provide its members with help in regard to many different programs, including health care reform?

*Mr. Falk. Absolutely. I have been to 15 to 20 different conferences that we have had.

*Mr. Thompson. I know that local Chambers of Commerce do it. I know that other business associations do it.

*Mr. Falk. Yes, yes.

*Mr. Thompson. I have had a number of town hall meetings in my district for business folks.

*Mr. Falk. Yes.

*Mr. Thompson. For small owners to come in and get answers to these questions.

*Mr. Falk. But the problem, Mr. Thompson -- excuse me -- is that it --

*Mr. Thompson. Excuse me. Let me. I have got a limited amount of time.

It is important that you do have these answers, and it is important for all of us to make sure that we work to provide those.

Mr. Jost, do you see this delay in the employer responsibility provision impacting access to health care insurance in States like California who have been working diligently to set up their exchanges?

*Mr. Jost. I do not think this will have a significant impact. I think the delay of the individual mandate would have a significant impact.

I am a consumer representative to the National Association of Insurance Commissioners and talk to a lot of regulators and insurers, and they would be very, very worried if the individual mandate would be delayed because as weak as it is, it is what is going to keep insurance markets from collapsing once we open the door to people with preexisting conditions and offer federal tax credits to help people get insured.

*Mr. Thompson. Mr. McDermott had mentioned that one of the reasons this was postponed was in response to business requests. I know you are not privy to discussions at Treasury, but do you believe it is fair to say that one of the reasons is that they have been hearing from businesses that they need it?

*Mr. Jost. Absolutely, and I included in my testimony statement by, I think, six major associations, like AHIP, like the Employee Benefits Council, that came out strongly affirming this when it was announced.

*Mr. Thompson. And is this unprecedented? Have administrations delayed implementation?

*Mr. Jost. Not at all. The Administration, in fact, has released a list of times when other Administrations, including the previous Administration, have delayed effective dates for --

*Chairman Brady. Thank you. Your time has expired.

Mr. Ryan.

*Mr. Ryan. Thank you.

If this is not a case for the need to simplify government, I do not know what is. This law is literally just unraveling before our eyes. I do not know how you can conclude that this is not a total fiasco.

Mr. Falk, I want to give you a chance to respond in a second, but, Mr. Capretta, you are a well-known budget and policy fiscal expert, health care expert. Give me a sense of what the Administration was looking at as they saw this employer mandate unfolding from a perspective of what it was going to do to the economy and what it was going to do to health insurance markets.

What were the actuarial estimates, the various ranges? I know Deloitte put out a big study as to what would have happened to people with employer-sponsored health insurance once this mandate came about. If you recall, the law was sold on the premise that if you like what you have got, you can keep it.

And so, you know, for those of us who were here when this law was written, this is a law that was written which was never intended to go into law. I mean, the law as written was a Senate bill written basically on Christmas Eve with the intent to get into conference, then rewrite the law, fix it with the House, and then pass a final version.

But because they lost a Senate race in Massachusetts, because they did not have the ability to go back to the Senate again and pass an improved version, they took the bill that they wrote in duress on Christmas Eve and shoehorned that into law, which is what we have today.

And so we see all of these shoes dropping, all of this happening. What do you think the Administration was looking at? Because we will have Treasury here. We want to dig into their actuarial models and the rest. What were they looking at happening in the employer-sponsored health insurance market from your judgment because you look at the same numbers?

*Mr. Capretta. I think they were looking at two things. If you go back and look in 2009 and read what Dr. Reischauer said about the design of this particular employer mandate, I think the Treasury Department working with the employer community figured out it is essentially unenforceable because of the massive data requirements they are imposing on employers all across the country.

So they figured out, number one, this thing was way, way too much of a burden just to comply with it, with employers having to file these forms, filling out details about the insurance they were offering. It is a massive new burden, and employers are going to them saying, "You have got to be kidding me. We have to change every IT system in the country to comply with this thing. It ain't going to work."

I think the Treasury Department kind of figured that out, and they said, "Look, we cannot do this. It is going to be devastating. It will be a total mess."

The second thing I think they figured out is what you are alluding to, which is that, you know, they are kind of stuck at this point though because they have this massive subsidy system going in through the exchanges, and the reason the employer mandate was there in part was because they wanted to make sure there was not a huge exodus out of the employer system. Okay?

So they put this massive system in place to say, hey, if you are of a certain size, you have got to report. You have got to provide the coverage.

Now that that is gone at least for one year, they may be stuck with actually it is easier for employers just to dump their people into the exchanges. Now, you know, I am not sure that that is what they are -- you know, there is a lot of cynicism going around about what they are up to here, but I really do not know if that is their game plan, but certainly the employer mandate was put in there in part to create a firewall, as they called it, around the employer system and not allow leakage into the exchanges, which would drive up the budgetary cost.

Treasury has probably figured out that, look, the burden we are going to impose for one year on the employer system was so much it was going to cost jobs. It was going to be very disruptive. It was going to probably explode and actually not work. Therefore, you know, they were stuck between a rock and a hard place, and they picked the easy way out.

*Mr. Ryan. Yes, and so we see estimates where anywhere from 20 to 60 million people could have lost their employer sponsored health insurance over a long period of time and gotten dumped into the exchanges, and so we have the exchanges where we are, as Mr. Roy pointed out, in some cases doubling and tripling the cost of health insurance. So through the regulations we are imposing much, much higher health insurance costs on people, but we will subsidize them with taxpayer dollars. So make health insurance more expensive, and then subsidize it so the consumer does not feel the price as much. The

taxpayer bears the burden. The employer has a mandate. The employer has a greater incentive to just stop offering health insurance to their employees.

Most employers are sitting around the table thinking, "Well, if my competitor is going to drop health insurance and put their employees in the exchange, all I have got to do is pay a \$2,000 per person, you know, tax indexed at inflation versus, you know, ten to \$20,000 a family plan."

Once the employer makes that decision, it is not long after that their competitors will have to make the same decision and dump their employees into the exchange, and the costs are going to explode.

Mr. Johnson walked you through the charade of the Pay-Fors. I cannot see that this ruling right here will do nothing more than further explode the cost of this thing.

There is so much more I could get into, but in the interest of time, I will not.

Thank you.

*Chairman Brady. Thank you. Your time has expired.

Mr. Kind is recognized.

*Mr. Kind. Thank you, Mr. Chairman.

I want to thank the panelists for your testimony here today. I think it is always helpful for us to have these discussions.

And, Mr. Falk, I especially appreciated your testimony today, you know, the challenges that you are facing as a small business owner, but to my good friend from Wisconsin, I mean, the same point could be made on the opposite side.

I was back home last week, as we all were, for the 4th of July, and I met with a small business owner with 55 employees. He says, "Ron, I am glad there is an employer mandate as part of it because as a small business owner, when I first created this business I bent over backwards to make sure that my employees had affordable health care coverage, and yet right now I look down the street, and I have got competitors who are not doing it."

And he is providing affordable coverage with 55 employees because he thinks it is the right thing to do. It helps with recruitment. It helps with retention, and he feels it is the right thing to do for his employees.

And, in fact, over 95 percent of businesses over 50 are already providing coverage even though there is no requirement for them to do so because they have made a business calculation that it is in their best interest for recruitment and for retention and because it is the right thing to do to try to provide health care coverage.

So I think the same argument can be made on the other side. Mr. Falk, you said you have 43 employees. Are you right now providing health care coverage for them?

*Mr. Falk. Actually I have over 100 employees. It is 43 full-time equivalents, and, yes, I do provide for my full-time employees. I do not think the argument is there, the argument that you made. I think the argument is more the Band-Aid and the reporting requirements.

*Mr. Kind. But you are currently providing coverage for yours?

*Mr. Falk. For the full-timers, yes.

*Mr. Kind. Let me just ask the panel right down the line a simple question. Mr. Roy, what is your recommendation for this Congress, to fully repeal the Affordable Care Act or to fix certain features of it to make it work better?

*Mr. Roy. I think that repealing and replacing the Affordable Care Act would be an optimal policy outcome.

*Mr. Kind. Mr. Capretta, what is your recommendation, to fully repeal or to fix?

*Mr. Capretta. I am for repealing and replacing it.

*Mr. Kind. Mr. Dennis, what is your recommendation to the Congress?

*Mr. Dennis. Repeal and replace.

*Mr. Kind. Mr. Falk?

*Mr. Falk. If it does not get replaced enough, repeal it.

*Mr. Kind. Mr. Jost?

*Mr. Jost. I think that there are some things that need to be fixed, and I think they can be fixed if this Congress would set its mind to that task.

*Mr. Kind. My dad probably gave me the best political advice as a young kid growing up. He said, "Son, you are going to face two critics in life, people who criticize you because they want to see you do better and those who criticize you because they want to see you fail."

I think that is the major obstacle that the Affordable Care Act faces today, is there is so much opposition for political reasons alone to see that this thing fails and not whether it is going to help small business or help Americans throughout the country, and that is the real tragedy with these type of hearings and the discussion that we are having under the Affordable Care Act today.

Mr. Dennis, you are a representative of the NFIB. Every year I introduce the SHOP Act, which became the basis of the health insurance exchanges. The NFIB was fully supportive of it. We did not have an employer mandate as part of the legislation, but when I introduced the bill there were an equal number of Republicans and Democrats that supported it.

And now, Mr. Jost, we have had seven states now report back on what the rates would be for small businesses entering the SHOP exchanges, and they are coming in below what current rates are, and it is because what the exchange does is it sets up competition and transparency, finally empowering small businesses to have the same type of leverage that large businesses have today.

Mr. Dennis, do you know what percentage of your membership at NFIB have 50 or fewer employees?

*Mr. Dennis. Fifty or fewer?

*Mr. Kind. Yes.

*Mr. Dennis. Probably dealing with about 85 percent, something like that.

*Mr. Kind. I have got a chart. I guess we ran it off, your membership list in that, but it showed those with 40 or more employees is roughly a little bit less than seven percent of your members.

*Mr. Dennis. Yes.

*Mr. Kind. So around 93 percent of them are below 50 employees.

*Mr. Dennis. That is correct.

*Mr. Kind. So they are not even going to be impacted right now on the employer mandate; is that right?

*Mr. Dennis. No, that is not correct.

*Mr. Kind. And what type of information are you sending out to those members in regards to the Affordable Care Act today?

*Mr. Dennis. Well, we have basically a whole series of programs where we try and disseminate information to the members, printed as well as calling and conference type things. We send staff out.

*Mr. Kind. Good. I am glad you are doing that because there is a whole lot of misinformation being sent out misinforming people, I think, deliberately again to scare them and to make sure that this legislation fails.

Mr. Falk, are you also a member of NFIB?

*Mr. Falk. No, I am not.

*Mr. Kind. Okay.

*Mr. Falk. Sorry.

*Mr. Dennis. That is all right.

[Laughter.]

*Mr. Kind. I did not want to put you on the spot next to Mr. Dennis at all now, but Mr. McDermott did point out we have got healthcare.gov. We have got SBA.gov. There are a lot of sites that small businesses can go to get just the facts, and that is what I am hearing from folks back home more than ever. We just want the facts of what is happening and what we need to do to prepare for what is coming up.

And so if we can just focus on that and have honest conversations like we are trying to have today, I think all of us would be much better off.

Thank you, Mr. Chairman.

*Chairman Brady. Your time has expired.

Mr. Nunes.

*Mr. Nunes. Thank you, Mr. Chairman.

I will just say that Republicans want health care to be successful. They want the American people to have good quality health care, and what we see this as is not about some political issue about having the bill fail. We see this as definitely something that leans toward socialism, and socialism has been known around the globe to fail time and time again.

So I remind my friends on the other side of the aisle, as you may remember from the 2010 debate, these were the claims that we were making, was this was trying to centralize the health care system in Washington which has failed around the globe.

We want to improve health care. Now, I have a question that I am going to give to Mr. Capretta and to Mr. Jost. I do not know what part of the law the Administration is using to allow to just say that this mandate on the employer side can just be ignored, and I do not know why my friends on the other side of the aisle are not insisting that the letter of the law is followed.

So Mr. Capretta, do you know what waiver that they used, what part of the Affordable Care Act or ObamaCare was used? What are they citing to essentially waive this requirement?

*Mr. Capretta. In the blog post that has been referenced, they cite the reporting requirements is where they are going for a delay. So they are not actually going into the structure of the mandate itself to say it can be delayed. They are going to the section that requires employers to report on what they are doing regarding health insurance.

But there has been an inquiry sent by your leadership in the House to the President and his team asking that very question. I think they have been asked by the press, and they have not responded yet. So I do not know. There has been no official response from the Administration about their legal reasoning about how they could do this.

*Mr. Nunes. What is your personal opinion, Mr. Capretta?

*Mr. Capretta. My personal opinion is that -- well, I am not a lawyer. Let me stipulate that. Mr. Jost is a lawyer. So he can answer some of the questions about the legal part of it, but I think it is quite obvious on its face this is not what Congress intended. Whatever the legal, you know, however they might stretch some of the statute to say, "Well, you know, we can interpret this," this is not what was intended.

I mean, obviously the employer mandate was supposed to go into effect in 2014. They established a reporting system that was supposed to go into effect in 2014. If you read the statute, it is pretty obvious that is what was intended, but you know, I do not know whether they can stretch the language to do something different.

*Mr. Nunes. Thank you, Mr. Capretta.

Mr. Jost.

*Mr. Jost. There was a CRS report on this yesterday, and it referenced an earlier CRS report that referenced the Trap case, which is the leading case in this area.

The IRS is relying on its general rulemaking authority, and what the Trap case said, which is a D.C. Circuit case which is the leading case in this area, is that when a question rises as to whether an administration can delay enforcement of a law, it is subject to a rule of reason. Where Congress had provided a timetable or other indication that may supply content, although in the D.C. Circuit and several other circuits the courts have held that that does not make an absolute requirement.

But other things that can be considered are whether it would damage human health and welfare, whether the court should consider the expediting delayed action or other agency activities of the higher and competing priority, in other words, resource constrained; what are the interests that would be prejudiced by the delay.

So I think looking at the judicial legal authority here, I think that they do have some room.

*Mr. Nunes. Okay. So unions have been granted waivers. Other special interests have been granted waivers. Now you have done an employer waiver. Why can you not do an individual mandate waiver?

*Mr. Jost. Well, in fact, in the first place, I am not sure what you are referring to with respect to unions. There was a waiver that was included in the statute for a delay of the annual limits requirement, and some unions received a delay under that, although a lot of businesses did as well.

*Mr. Nunes. So let me --

*Mr. Jost. Can I just finish?

*Mr. Nunes. Can the White House grant an individual waiver? That is my question.

*Mr. Jost. The statute --

*Mr. Nunes. For an individual mandate.

*Mr. Jost. The statute permits a hardship waiver and in regulations that were published about a week or two ago, the Administration interpreted that very broadly. There will be many, many people who will qualify for a hardship waiver, but of course, there are already, I think, seven or eight other exemptions, including an exemption for everybody who cannot afford coverage.

So the individual mandate has been very widely misunderstood. It is not a requirement that applies to everyone.

*Mr. Nunes. So why not just do an individual mandate waiver also at the same time?

*Mr. Jost. Because people who can afford health insurance ought to buy health insurance. They ought not to wait until they get sick and then assume that their neighbors will take care of them. It is an individual responsibility requirement, is what it is called.

*Mr. Nunes. Mandated by the government. That is not individual --

*Mr. Jost. Yes, just like -- just like --

*Mr. Nunes. -- responsibility or individual liberty. That is socialism.

*Mr. Jost. Just like government requires that you get car insurance.

*Mr. Nunes. Yield back.

*Chairman Brady. All time has expired.

Mr. Pascrell.

*Mr. Pascrell. Yes, Mr. Chairman.

When all else fails, then you have got to send up the red flags: socialism, apocalypse now. And we heard it again just recently.

Well, I resent the fact that, first of all, you accused those folks who sat hour after hour in putting the legislation together of doing a Christmas Eve swing. Months after months, listened to many people on this issue.

Is this perfect? There is not a piece of legislation that ever came through this body that was perfect. So we need change. You cannot deny that ObamaCare -- we will use your term -- is helping millions of Americans. Do you want chapter and verse? I will give it to you.

You cannot deny that most employers offer health insurance even without a mandate, and small businesses will be exempt.

You have no ideas on health reform yourself. In fact, those you put before the Congress your own party rejected. So you cannot have it both ways.

More important, more important, it is better to be right than fast. And, Sam, you know that better than anybody on this panel.

Things change. Things need to be corrected. So, Mr. Falk, when you say that the information is not existing, I will give you the information. We have got it in print now.

*Mr. Falk. I did not say it did not exist, sir.

*Mr. Pascrell. Well, it is here.

*Mr. Falk. I agree.

*Mr. Pascrell. It is interesting. In fact, on the first page of the regulations that you referred to, you have not looked at anyway. It is a very interesting part of this legislation, the medical loss ratio. Do you know what that is, sir?

*Mr. Falk. No, I do not, sir.

*Mr. Pascrell. Let me tell you what the medical loss ratio is, and that is insurance companies now must provide and spend a specified percentage of premium dollars on medical care, which they never had to do before. This is very critical to everybody.

There are a lot of good things in this legislation. I am glad you are the only panelist on the left of Mr. Jost. That said, well, if it cannot be fixed enough, then maybe I would repeal it.

This is all about repeal. They do not want to change it. They want to do away with it. The election is over. The Supreme Court decision has been rendered. But we are going to continue to try to do away with this entire piece of legislation, which is reforming health care.

Now, Mr. Roy, the more than 95 percent of businesses are small businesses. They have got fewer than 50 employees that would not be subject to this mandate. Do you agree with me so far?

*Mr. Roy. Not subject to this mandate is not a static term because businesses grow and --

*Mr. Pascrell. Do you agree with me or disagree with me.

*Mr. Roy. I disagree with you.

*Mr. Pascrell. Good. An approximately 200,000 large businesses with more than 50 employee are subject to the employer responsibility requirement. Of these 200,000 large employers, at least 95 percent already offer health insurance to their employees.

Do you agree with that statement, Mr. Jost?

*Mr. Jost. Yes.

*Mr. Pascrell. You agree.

Do you agree with Mr. Jost?

*Mr. Roy. I do agree, but as I mentioned that does not mean that all of those employees are covered.

*Mr. Pascrell. And what do you mean by that?

*Mr. Roy. Ninety-five percent or 97 percent, as I mentioned in my remarks, 97 percent of businesses with greater than 50 or more employee do offer health benefits, but not necessarily to all employees. A significant number of the uninsured are actually people who are employed by those firms.

*Mr. Pascrell. Mr. Jost, do you think that it seems likely that employers who currently offer coverage right now would start dropping their health insurance all of a sudden?

*Mr. Jost. No.

*Mr. Pascrell. Why not?

*Mr. Jost. Particularly if they know that it is going to come back in 2015.

*Mr. Pascrell. This is all I have been hearing over here, but why do you not think so?

*Mr. Jost. Well, number one, the main reason employers offer health insurance to their employees is for recruitment and retention. Employees expect health insurance.

Another reason is that there are huge tax subsidies that are already there, which was mentioned by Mr. Capretta and Mr. Roy.

*Mr. Pascrell. Yes.

*Mr. Jost. If we wanted to have the largest tax increase in American history by abolishing the employer tax deductions and exclusions, we could talk about that. I am not sure that many members on this Committee want to do that.

*Mr. Pascrell. I would.

Mr. Roy, do you agree with Mr. Jost?

*Mr. Roy. I do agree that it would be desirable to move away from an employer-sponsored system to an individually sponsored system.

*Mr. Pascrell. Thank you very much, Mr. Chairman.

*Chairman Brady. Thank you.

Mr. Roskam.

*Mr. Roskam. Thank you, Mr. Chairman.

So are we looking for perfect in response to my friend from New Jersey? We are not looking for perfect. We offered 30 amendments when we were in the minority that were swatted away by the majority late into the night, not considered, not adopted. Many of them were thoughtful attempts to improve the bill. So we are not looking for perfect.

What we are looking for is even a reasonable characterization of what was promised. What was promised to the American public by the President of the United States was you get to keep your physician. If you like him, you get to keep him. Do you remember that? That is not true.

Average health care costs per family are going to go down \$2,500 a year. Do you remember that? That is not true.

So we are looking for a reasonable assimilation of the representation to the public by the President of the United States and his Administration during the course of the debate. That is long gone. That is far in the distance. That is never going to happen.

And so now here we are, and we are debating and we are considering what is clearly an embarrassment. And it is an embarrassment that we could see a foreshadowing of it when then Speaker of the House Nancy Pelosi said this out loud. She said, "We have to pass this bill so that you can see what is in it." Wow, she just do not disappoint.

And here we are. So now we have got a situation where essentially the Administration for years has been pumping sunshine. For years the Administration when asked, "How are you doing this exactly? How is this great feat coming to fruition?" and this Committee and in all sorts of public representations has been told, "It is fine. It is great. We have got it under control. In fact, we have got a wonderful plan for your life, and it is going to be absolutely terrific."

And now what happens? Later before a holiday weekend the Administration on a blog post essentially whispers, "It is not working. Oops. This is a mess."

Yeah, but you know what? You may not be able to hear me, but the whole country heard that whisper, and it was a blog post. We were admonished a couple of minutes ago to go check Websites. Go check Websites? It is ridiculous.

So now here we are, and I have a prediction to make. My prediction is this, that the ObamaCare statute, the Affordable Care Act as it has been enacted is unsustainable. It is unsustainable because of a whole host of reasons. The architecture is fundamentally flawed, and it is an edifice that is now wavering.

And one of two things is going to happen. Many of the proponents, not all, but many of the proponents of ObamaCare, actually their heart's desire is the single payer system, and they will tell you that. They admitted that during the course. They could not get single payer. Their fallback position was the public

option. Could not get the public option. Fallback position was ObamaCare. That is their heart's desire, a single payer system.

That is one way that this could go. The other way it could go, and it is my hope that it goes in a very different direction, and that is toward a consumer oriented health care system. So do we want to repeal this? You bet your life. Caught red-handed, we absolutely want to repeal this. We want to replace it.

The red herring argument that we heard a couple of minutes ago from my friend from Wisconsin, Mr. Kind, was that somehow a desire to see something fail is somehow unjust. No, what we want, as Mr. Nunes said, is we want to see health care improved, but we have got a far different vision, a vision that was blocked out during the debate in this Committee in this room late at night during the debate on ObamaCare, but now it is coming to fruition, and we have got an opportunity to remedy this.

And my sense is that the public is waking up. The public has an awareness there was a false claim, and they want to redeem now that false claim and revisit the false representation that was made to them, and it is their hope that this Congress is part of that solution, and I have every confidence that we can do this, that we can have patient oriented, consumer health care that empowers patients and physicians to meet one another and have an absolutely terrific system without big government telling us what is right and what is wrong.

I yield back.

*Chairman Brady. Thank you.

Mr. Rangel.

*Mr. Rangel. Thank you, Mr. Chairman, for the courtesy that you have extended in allowing me to participate in these very, very important hearings.

And to my friend and colleague, Mr. Roskam, I join with the sunshine pumpers, and I think that is what all of us are. We really try hard to improve the quality of life for Americans, and we have these hearings to see whether or not there are storms or impediments, to see whether or not we are doing the right thing.

And so I want to welcome all of you to come to help us to make certain that if we are on the wrong track, you can help us by improving the work that we are doing as a Congress.

Now, it is my basic understanding that with the exception of Mr. Jost, the other four witnesses support repeal. So there are no sunshine pushers there. You believe that we ought to get rid of this, and I assume out of the four, with the exception of Mr. Falk, right now none of you have a small business. You do not make payrolls and you do not have responsibilities for health care and pension benefits for anybody; is that correct?

And I would assume further that you are not just volunteering your thoughts. The three of you are experts in what you do unlike Mr. Falk, and you get paid for what you do the same way doctors and lawyers get paid. Calling you lobbyists would not be a stigma. It would be just a label as to what your business is. Am I correct in that assumption, Dr. Roy?

*Mr. Roy. No. I am not a lobbyist. I am a Senior Fellow with the Manhattan Institute, which is a nonpartisan policy research institute, where I have actually articulated alternatives to the Affordable Care Act that would provide universal coverage.

*Mr. Rangel. So you do not get any compensation -- no, no. You are extremely qualified in research. I read that, but you do not get paid to take a position? In other words, you would not be here, your firm, the

research outfit, if you were supporting or trying to improve the health care. You are here basically, your income is based on the fact that that is your professional position. I mean, you are not a doctor. You are not --

*Mr. Roy. I would strongly, strongly disagree with you. I have articulated --

*Mr. Rangel. Do not disagree. Just say what it is.

*Mr. Roy. Yes, I am sorry. My position --

*Mr. Rangel. I am asking.

*Mr. Roy. My positions are on the record. I write them every day on the Internet. I have not only advocated --

*Mr. Rangel. I am asking you whether you get paid for advocating your position. That is all. I do not doubt that you are professional with it.

*Mr. Roy. I do not get paid to advocate any particular position. I --

*Mr. Rangel. Well, when you were working for the person that was running for President, did you get paid for advocating a health position with him?

*Mr. Roy. No, I did not.

*Mr. Rangel. You are a volunteer professional.

*Mr. Roy. I volunteered for the Romney campaign, yes.

*Mr. Rangel. But I mean in the positions that you take on health care, you do not get compensated for it.

*Mr. Roy. I do not get compensated for taking any particular position on any particular piece of legislation.

*Mr. Rangel. So what you are doing is volunteer contribution you are making to help us on the committee and others to understand your position. You are not a doctor, but you do have a professional position, right?

*Mr. Roy. I have articulated my view about the Affordable Care Act. I have done so here today

*Mr. Rangel. And you have done it eloquently, but the only person I am concerned with is Mr. Falk because it appears to me that it is his opinion that would help us understand better what we have done and how we can do it better.

And incidentally, I am an infantryman and my son is a Marine, and so I cannot say anything unkind except Semper Paratus because you guys in the Marines, I want to thank you for your service, but whatever they put in your water, I can understand that you are just as excited about your business as you have been for serving our great country. I want to thank you for your service.

Now, with all of the people that you hire, approximately part time and full time, what is the breakout of that? I know you have more part time than full time.

*Mr. Falk. Absolutely. Probably about 15 percent of my employees are full-timers, but that is by choice. Most of the people that I employ are first time employees. They are high schoolers, college kids.

*Mr. Rangel. No, I know, but if you needed full time, you would hire full time.

*Mr. Falk. Absolutely, and I offer most of my employees --

*Mr. Rangel. Supply and demand.

*Mr. Falk. -- as many hours as they want.

*Mr. Rangel. Okay. But you said that those who work full time, the 15 percent, they get health care.

*Mr. Falk. I offer health care to them.

*Mr. Rangel. They accept it.

*Mr. Falk. Not all the time.

*Mr. Rangel. But you offer health care not because you are a nice guy. It is a part of good business, is it not, to make certain that the workers have access to health care?

*Mr. Falk. It is because I am a nice guy, and it is good for business. It is about providing an opportunity for my employees. I want to take care of them because they are very valuable to me.

*Mr. Rangel. So if we --

*Chairman Brady. Thank you. All time has expired, Mr. Rangel.

*Mr. Rangel. Could I just ask one concluding question, Mr. Chairman?

*Chairman Brady. Perhaps we can follow up or we can submit in writing.

*Mr. Rangel. That means that I cannot ask the question.

*Chairman Brady. That would be the correct assumption.

*Mr. Rangel. All right. Thank you, Mr. Chair.

*Chairman Brady. I would also like to point out for the record, your qualifications, none of yours are in question today. You may have different views and different beliefs, but you are here because you care about the issue. You are expert in the issue. You are impacted by the issue, and on behalf of the committee we are pleased that you are here with us today.

*Mr. Rangel. And I want to join with the chairman in his observation.

*Chairman Brady. Thank you.

Mr. Gerlach.

*Mr. Gerlach. Thank you, Mr. Chairman.

First, Mr. Roy and Mr. Capretta, a macro questions if we can. We have not talked too much about this during this hearing, but since the enactment of ObamaCare to this point when this employer mandate has been temporarily suspended for a year, what do you think the overall impact of the enactment has had on GDP growth relative -- and also add in Mr. Dennis as well for NFIB -- what is your thought on the impact of the slow growth we have had in the GDP over the past few years relative to the implementation or the proposed implementation of this enactment?

What impact has it had on the decisions of our business, our job creators relative to their decisions to hire and expand?

*Mr. Capretta. Well, I do not think I have seen an academic estimate of that. So, you know, it is necessarily a subjective kind of responsive I am going to have to give.

There has been a lot of information coming through the system even at the Federal Reserve level where they have noted that employers are responding to the incentives of the health care law by limiting the hiring they are doing. So if the direction is clear, it is negative, but the size and quantity of it, you know, that is a little bit harder for me to put a number on that.

I would say that there have been many reasons why the economy has performed poorly in a certain sense in this post-recession period, but this is certainly one of the reasons.

*Mr. Roy. I would add that what we have seen is a substantial shift from full-time employment to part-time employment. So we have record high numbers of people who are part-time workers and lower and lower numbers of full-time workers, and that is a transition I would expect to continue as small and medium sized employers wrestle with the employer mandate, another reason why it would be a great policy to repeal the employer mandate.

*Mr. Gerlach. Mr. Dennis?

*Mr. Dennis. Now, we keep data and produce it monthly on the status of the small business economy, and it has been quite clear that over the last few years things have not gone well. The difficulty is -- and that is all since 2010 -- the difficulty is trying to pull out what is actually the macro economic issues from the problems put forward by ObamaCare. We simply just cannot tear them apart as to which is which.

Clearly, it has had some impact on their general view of the requirements that are before them and the costs that are before them. We do have some data suggesting recently that they are becoming increasingly concerned about political issues rather than economic issues as an impediment to their growth.

Political is a very wide term and it could be a whole series of things.

*Mr. Gerlach. Mr. Falk, you indicated that you think it is important to provide health insurance to your full-time employees, and you also indicated that your part-time employees are offered the opportunity to work more hours if they want to.

Does that working more hours at some point lead to the prospect that you might get to a point where you would hit the 50 full-time employee threshold, and if so, what that then means in terms of your ability to conduct your businesses, your 12 units?

*Mr. Falk. Well, it definitely is something I take into consideration. At my current size, I do not think that I will go over that threshold immediately.

*Mr. Gerlach. And what has been happening with your current insurance premiums over the past few years for the health insurance you are providing your full-time employees? Has that been steady?

*Mr. Falk. No.

*Mr. Gerlach. Has they been going down?

*Mr. Falk. Every year it has gone up. I mean, it is true. I mean, it is not a myth out there that my insurance premiums for my employees that we share the premium, where I still pay the majority, it costs me more and it costs them more every year.

*Mr. Gerlach. And can that be tied to the continuing pressures of the ObamaCare requirements that the health insurance industry continue to pay a billion dollars' worth of assessment to the Federal Government each year, which in turn gets passed on to the employers that pay those premiums to the insurance company, the lifting of the policy cap part of the enactment, the extension of coverage to those 26 years of age; do you think all of those factors as they continue under ObamaCare lend themselves to increasing premiums for the job creator on the street?

*Mr. Falk. No, Mr. Gerlach, I do not know. Mr. Rangel is very good in pointing out that all of these other panel members are experts in what they do in health care. If I were to tell them that they have, you know, until July to get 12 businesses up and running and there was a Website out there that they could go to figure it out, I am sure they would be overwhelmed as well.

So this takes up all of my time right now.

*Mr. Gerlach. Very good. Thank you. I appreciate it.

*Chairman Brady. Thank you.

Dr. Price.

*Mr. Price. Thank you, Mr. Chairman, and I want to commend you for holding this hearing.

This is a remarkably important topic as we move forward with the calamity that is confronting the country right now.

Just to set the record straight, Republicans are for health reform. We are for positive health reform. We are for reform that recognizes that patients and families and doctors ought to be making medical decisions and not Washington, D.C. So there are wonderful, positive solutions. I am sorry my friend from New Jersey has left, but I will remind him once again, as I did in our last hearing, that H.R. 2300 is there for his perusal, and I would encourage him to take a peek at it. It embraces those positive solutions.

Mr. Kind talked about this being all about politics. Well, now, you talk about politics. Here is an announcement from the Administration coming out on a blog post from the IRS, a blog post. So now we have governance by blog post, I guess, that delays the reporting requirements. It does not delay the law. It delays the reporting requirements for employers for a year that just so happens to fall after the 2014 election. Talk about politics.

I would encourage my friends to open their eyes to the political activity of the Administration.

Mr. Jost, you said, "If you actually care" you would throw more money at this program. Well, with all due respect, if the individuals who wrote this law actually cared about the health care of this country, they might have investigated the consequences for physicians taking care of those patients, as I did for over 20 years. They might actually have talked to folks like Mr. Falk, who are out there trying to run a business and create jobs instead of doing what we have clearly identified and has been actually admitted to by folks on

the other side of the aisle when they are honest behind closed doors that this was not to be the final product, as Mr. Ryan talked about again.

This is a delay in the reporting requirement. This does not change the law one iota, not one iota, and so, Mr. Falk, I want to commend you for what you are trying to do out there, to navigate the remarkable waters of this destructive law.

You mentioned in response to Mr. Thompson, and I had a question. You said there was some concern about getting information and you were having difficulty doing that, and he did not allow you to respond. I would like to give you an opportunity to present the challenges that you have got in getting information.

*Mr. Falk. Right. One of the things I wanted to respond to him about was I have been to 15 to 20 different conventions, and we have had a briefing about health care every time, but every time it is a different briefing. That target continues to move, and with every new policy or extension or waiver or consideration that they are giving to somebody else, I still do not know what to do.

And he is right. Yes, there is a Website out there, healthcare.gov. It just got announced publicly a couple of weeks ago. I understand that, and I will go there, and I will look up all of the information I can.

But, see, I am engaged. I am here. I do all of these events. I do all of these conferences on business. There is probably 75 percent of small business owners who have no idea what is going on. They do not know about healthcare.gov.

*Mr. Price. I can say I have been to healthcare.gov. It is wonderful, beautiful site, but it does not do a thing to assist you in trying to figure out how you are supposed to comply with the reporting requirements that have now been delayed.

When you spend all of this time trying to comply with government regulations like this and rules that are incomprehensible, what is the consequence to your employees and to your business and to job creation?

*Mr. Falk. Well, again, all of these guys are experts, but they really are not creating any jobs. I am trying to create jobs and grow my business, but right now I am fortunately enough to be a large enough small business owner that I have an operations manager and I have an administrative assistant, but I do not have a government relations person on my staff, like maybe Microsoft or Boeing has as Mr. McDermott talked about earlier. So I have to shoulder all of these burdens to find out what is going on with health care and how it is going to affect me, my employees and my business.

My business is what provides me an income for my family, the profit that I make. So if these costs continue to take out the profit, I am going to decide either to not grow or to close some of my lower performing units because they are just not going to make enough money, and therefore, it is going to take jobs away.

*Mr. Price. Take jobs away, exactly.

*Mr. Falk. Yes.

*Mr. Price. Mr. Roy, I want to touch on the point that you were making about part-time workers. I have had employers in my community tell me they are decreasing the number of full-time workers to part-time workers because of this law. In fact, 322,000 increase in part-time workers, involuntary part-time workers to 8.2 million in June.

Can you describe the consequences that are happening in the real world, bringing about increasing part-time workers and how destructive that is to job?

*Mr. Roy. You know, we have heard a lot of talk today about what the right thing to do is or what employers would do if they care. We have not heard a lot about what the incentives are, and the incentives are very clear with the employer mandate. It is to restructure to part-time workers because then you do not have to offer coverage to those part-time workers. That is just the plain as day economic incentive in this law and that is what will drive activity.

*Chairman Brady. The time has expired.

*Mr. Price. Thank you, Mr. Roy.

Thank you.

*Chairman Brady. Thank you.

Mr. Buchanan.

*Mr. Buchanan. Yes, thank you, Mr. Chairman.

I wanted to mention as someone who has been in business 30 years before I got here that we have two Chambers in our area, about 2,000 each in Sarasota and Manatee Counties. Ninety-three percent, 90 percent are 50 employees or less. The Florida Chamber, I was very active with them, 137,000 businesses in that Chamber, 93 percent or less 50 employees or less.

The number one issue, not in the last three years; I would say in the last 13 to 15 years, and I would be interested in your comment on this, Mr. Dennis; the number one issue is the rising cost of health care. In our area, we had one employer that has been somewhat successful. His costs last year, a larger employer, went up \$1.5 million.

But the other end of that spectrum that I deal with mainly when we do town halls, and we all do town hall meetings, one woman stood up and she said, "I have six employees. My health care cost has gone from 1,000 to \$2,000 for a family of four."

That is the thing that is crazy. It is unbelievable. They said they were going to cut the cost 25 percent. I am just looking at reality with a lot of businesses. They get their bill every year. I had a pharmacist that I walked in the other day. His bill came in, 27 percent increase. He negotiated out 12 percent. The employees are kicking in more. The coverage is not quite as good. So they get it down to about 12 percent, but that is the reality.

This is doing nothing to bend the cost on health care in the last three years even though it was supposed to come down 25 percent.

Mr. Roy, I want to go to your point, one point that you made, because that is what I see in our area, and that is the uncertainty that people are feeling about not expanding, not growing, and not creating jobs.

But you said that health care cost already has or is going to double or triple. Is that what you said or how did you say how health care costs are going up substantially? And then give me a little more background on where you are getting your information from.

*Mr. Roy. Well, health care costs, the cost of health insurance is increasing for everyone, but it is going to particularly increase for people who shop for coverage themselves, the so-called individual or non-group market. That is where the Affordable Care Act's heavy regulation of the individual insurance market will drive up the cost of insurance plans in that market by two to three times for some workers, and on an average it seems like it is --

*Mr. Buchanan. So you are saying a worker might pay what now, based on your numbers, and what are they going to pay in somewhat the future?

*Mr. Roy. So, for example, in the State of California where I have done extensive research, the average increase for unsubsidized individuals shopping for insurance in the non-group market will increase by about 70 percent.

*Mr. Buchanan. That is what I am hearing.

Mr. Falk, I want to just first applaud you because we need in this country to be competitive with China and India more start-ups, more entrepreneurs, more people willing to take risk, more people who are willing to sign a note at the bank and put everything at risk. So I applaud you and what you are doing.

But you said something about planning, and everybody that is in business or I have always done some kind of planning, but one of the factors is the uncertainty factor. One of the factors is cost going forward for employees.

It used to be someone said the other day in his business 22 percent. Now when you hire someone for 50,000, you have got to figure almost on 40 percent in terms of his experience, but in terms of your business, how many jobs do you think maybe you have not created or businesses you might not open as a result of dealing with the uncertainty?

*Mr. Falk. Well, as I said, from 1998 to 2008, about one and a half locations per year on average; from 2008 until today, five years, I have only opened up two locations, and that was just last year.

So I would say that, you know, I probably could have opened up another six to eight locations. As I get bigger I can probably move a little bit more aggressively because I have more assets, but I have chosen not to do that because of the uncertain economy and all of the regulation changes that happened, not just with the ACA, but with taxation and everything else, but the ACA is the most important regulation right now that is on my mind.

*Mr. Buchanan. Thank you.

Mr. Dennis, I was going to mention you said multiple entities. How many? Is that a huge issue within the NFIB or is that in a list of five or six things more at the bottom of the list?

Because I have got a lot of people where their wife owns a business and they own a business and it is family related. Their son has a business, and they are very, very concerned, again, about the uncertainty.

*Mr. Dennis. Well, the truth is we do not know exactly how big it is. I think it is what I call a sleeper issue because we just do not know exactly how broad this extend. For example, of all small businesses that have 20 or more employees, there is only about 35 percent of those that have a single owner. Most of them have multiple owners.

And then you talk about business owners themselves, and 39 percent of them own multiple businesses, and they do this in combinations, and of course --

*Chairman Brady. Your time has expired. I am sorry, Mr. Dennis.

*Mr. Buchanan. Thank you, Mr. Chairman.

*Chairman Brady. You are welcome.

Mr. Smith is recognized.

*Mr. Smith. Thank you, Mr. Chairman, and thank you to all of our witnesses today. I know that you have a great perspective and expertise on both sides of the issue, and these are discussions that I think are healthy and need to be had.

We know that the American people want our health care systems to work. There is growing skepticism that the more the government gets involved, the more expensive it becomes, and actually people can be harmed, and that is a growing concern and one that I think we all share.

Mr. Jost, you are an expert on the President's health care bill, and I appreciate that. I think you have probably studied that a great deal. This component that we have discussed here today we are told is not ready for enforcement, and do you think there are other components that might share the same view of yours or are there other parts that perhaps you think need to be delayed as well?

*Mr. Jost. Well, I think that the Administration right now is in a triage mode. Seriously, they do not have the resources to implement all of the provisions on time.

*Mr. Smith. So it is a lack of resources?

*Mr. Jost. Much of it is a lack of resources. Another part of it is the way this law was intended to be implemented, the States were going to take much of the responsibility. For political reasons, the States have declined to do that. So the Administration has ended up with a much bigger job than they otherwise would have had.

So I think they are under a lot of pressure. I think they are trying to decide what needs to be done right now, what can wait a little bit.

There have been a couple of other provisions. Another provision that relates to business is the nondiscrimination in favor of highly compensated employees provision, which says that for businesses who are insured, they cannot offer a better package to their highly compensated employees than they can to their lower compensated employees. That raise a lot of difficult issues which we could probably spend another hearing talking about, but they have said that provision fortunately says nothing happens until they put out regulations.

So they are trying to figure that out. That is going to interface with this one. So I think that they have decided -- they do not talk to me any more than they talk to you -- but I think they have decided just from my observation that they are going to focus on what is absolutely essential, which is the premium tax credits, the individual mandate to keep the insurance markets from collapsing, getting the exchanges up and running, and things like the employee --

*Mr. Smith. Now, when you say the premium tax credits, is that the small business tax credit that I constantly hear from folks back home that it is so complex?

*Mr. Jost. No, this is the individual tax credit. The small business tax credit is already out there.

*Mr. Smith. Do you feel that a lot of small businesses are eager to take advantage of that and find it to be an efficient use of resources?

*Mr. Jost. A nonprofit that my wife is on the board of has taken advantage of that and has found that it has allowed them to extend insurance to their employees. A lot of other small businesses have, but you are right. Many have found that it is really limited to small business, very small business with very low wage employees. So it does not apply to a lot of small businesses.

But I think the Administration is moving ahead with the resources they have and the time they have to do the essential, which is to get health insurance to people who are uninsured and who need health care.

*Mr. Smith. Thank you.

Mr. Dennis, if you could reflect a bit perhaps on the small business perspective on this small business tax credit, the feedback I get from constituents is that it is much more hassle than it is worth, and it only adds to the complexity of our already very overly complex tax code.

*Mr. Dennis. Yes, the small business tax credit, I do not know whether I want to call it totally a fiasco, but it really has not done very much, and the good part of the reason was that it was not structured very well, I think, and it is very complex.

The second one is that it is a bit of a bait and switch in the sense that it brings you in and gives you credit for a while, and after a while it goes away. So it gives you this incentive to make an obligation, if you will, and then once you have made the obligation and gone on for a year or two, then it is gone.

So it has not been successful in the sense of very few people or very few businesses have taken advantage of it. There have been a few businesses that have taken advantage of it. In all likelihood they would have been offering health care anyway, but it was apparently enough of a stimulus to help out a little bit.

*Mr. Smith. Okay. Thank you. I yield back.

*Chairman Brady. Thank you.

Mr. Kelly is recognized.

*Mr. Kelly. Thank you, Mr. Chairman, and I thank the panel for being here.

I especially want to talk to Mr. Falk, because I am also a small business person, but I think that when you look at this whole activity that is taking place right now, and I think the piece that is missing more than any other is the relationships that you build with the folks that work with you. Being an employer and having associates, we have about 110, 115 people at any one given time, but the relationship is a lot different. I am an automobile dealer. It is not a front end machine. It is not a piece of equipment. It is a person, and what we are talking about today is people.

We are talking about is it fair for everybody. Does it make sense for the American people? Is it really providing what it was supposed to provide? And because the infrastructure cannot be put in place, now it is being delayed, and being delayed. It is not being waylaid. It just being delayed.

Because people need to understand. You as an individual, and Mr. Rangel said something about you. You are a good guy, and I am sure the people that you paid -- we pay every two weeks, on the 6th and 21st actually -- they think I am a good guy, but only if I can pay them, and they do not work for me because they like me. They work for me because they like me, but they additionally can provide for their families.

This piece of legislation though has made it so difficult for people that get up every day and do not walk into Congress, but walk into their business, that have to worry about payday and have to worry that you have got to sign the front half of the check so that your employee can sign the back half of the check, and doggone it, that had better be able to work.

I think what is missing here, and I really find it unusual that an outfit that is running \$17 trillion in the red is able to sit down and give anybody business advice. Give me a break.

Now, most of the things that we run, small businesses are not only family owned. They are family operated. Tell me about the people because I have got to tell you. I have been to baptisms. I have been to first communions. I have been to weddings. I have also been to funerals. So we follow each other the whole way through life. These are people. These are people that we get to know. They are part of who we are, and that is what makes us successful.

But this law separates you. You are no longer able to be a good guy. You are a guy now that is keeping them from attaining something because the government mandated that it be done. Now, you do not want the employee mandate? No, you do not have to worry about that. Why? It is not because small businesses asked for it. It is because there is no infrastructure in place to handle it. Come on. Be a little bit honest about this, right?

And I think the American people have witnessed this, and they now know that if it waddles like a duck and quacks like a duck, it is a duck. This is a bad piece of legislation that does not serve its purpose, and some of my colleagues said ahead of time if you like what you have, you can keep it. If you like your doc, you can keep it. I am 65 now, and if I want to sit down with my kids and decide what my medical future is, forget that deal. That is not going to happen.

But now the individual mandate is still in place. My question to you because you live with these folks; you work with them every day, and when you said you worked how many hours a week?

*Mr. Falk. In the 80 hours.

*Mr. Kelly. Eighty, and I know on 4th of July because we are open 4th of July, too.

*Mr. Falk. Yes.

*Mr. Kelly. But it is not just about that because we know when you run your own business you do work half days, and it does not matter whether it is the first 12 or the second 12.

*Mr. Falk. Right.

*Mr. Kelly. And some days you have to work a little overtime, but you live it. That is my point. You live it, and we have driven a wedge between you and the people who work with you, who work for you, who work towards your mutual success.

Tell me how hard it is, and, Mr. Roy, maybe you can chime in. There is so much uncertainty with this. This is what makes it difficult, and we do not know tomorrow. What is the next shoe to drop? What else are they going to hold back on?

*Mr. Roy. Yes. So it is not just because there is regulatory uncertainty because the law makes so many dramatic changes to the way employers deliver health insurance. It is also that the regulations have been coming out piece by piece and contradicting each other.

So, for example, and this is not even about small business, but this is about States, the States that have been trying to roll out these exchanges, I mean, they are usually Democratic States, right? So these Democratic States, these exchanges directors are saying, you know, "We designed the exchange. We built the exchange, and then HHS comes along and completely changes all of the regulations about how the exchange must be designed, and we have to go back and start over and rebuild our systems from scratch."

And that happened so many times in the last 12 to 24 months that at a certain point, a lot of these State exchange directors said, "We give up. We are going to ignore HHS and just set up the exchange because if we do not, we will not meet the October 1 deadline to get the exchange going."

So it is not merely that the laws are poorly designed and that businesses are facing this. Individuals are facing this. State governments are facing this, the regulatory uncertainty because the law is so complex and so difficult to administer, and the employer mandate is Exhibit A.

*Mr. Kelly. And I understand, and that is why I wanted Mr. Falk, because it is about a relationship that exists between the owner of the business and those folks that work with them in a common effort to be successful. Both parties participate in it and both parties benefit from it.

I know it is going to be hard on you.

*Chairman Brady. All time has expired. I would like to thank our witnesses for their testimony today. It has been an eye-opening discussion. Clearly we need to get real answers also from the Treasury Department, and we will do so next week.

Just as a reminder any member wishing to submit a question for the record will have 14 days to do so. Any questions submitted I would ask the witnesses to respond in a timely manner, which I know you will.

With that, thank you again, and so the committee is adjourned.

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]

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